

Senate File 2195

H-8151

1 Amend Senate File 2195, as passed by the Senate, as
2 follows:
3 1. By striking everything after the enacting clause
4 and inserting:
5 <Section 1. Section 476.1D, subsection 1, paragraph
6 c, Code 2014, is amended by striking the paragraph.
7 Sec. 2. Section 476.1D, subsection 2, Code 2014, is
8 amended to read as follows:
9 2. ~~Except as provided in subsection 1, paragraph~~
10 ~~"c", deregulation~~ Deregulation of a service or facility
11 for a utility is effective only after a finding of
12 effective competition by the board.
13 Sec. 3. Section 476.3, subsection 2, paragraph b,
14 Code 2014, is amended by striking the paragraph.
15 Sec. 4. Section 476.4, Code 2014, is amended to
16 read as follows:
17 **476.4 Tariffs filed.**
18 1. Every public utility shall file with the
19 board tariffs showing the rates and charges for its
20 public utility services and the rules and regulations
21 under which such services were furnished, on April
22 1, 1963, which rates and charges shall be subject to
23 investigation by the board as provided in section
24 476.3, and upon such investigation the burden of
25 establishing the reasonableness of such rates and
26 charges shall be upon the public utility filing the
27 same. These filings shall be made under such rules as
28 the board may prescribe within such time and in such
29 form as the board may designate. In prescribing rules
30 and regulations with respect to the form of tariffs,
31 the board shall, in the case of public utilities
32 subject to regulation by any federal agency, give due
33 regard to any corresponding rules and regulations
34 of such federal agency, to the end that unnecessary
35 duplication of effort and expense may be avoided so far
36 as reasonably possible. Each public utility shall keep
37 copies of its tariffs open to public inspection under
38 such rules as the board may prescribe.
39 2. No later than January 1, 2015, a telephone
40 utility is required to file tariffs as provided in
41 this section only for such wholesale services as may
42 be specified by the board.
43 3. Every rate, charge, rule, and regulation
44 contained in any filing made with the commission on or
45 prior to July 4, 1963, shall be effective as of such
46 date, subject, however, to investigation as herein
47 provided. If any such filing is made prior to the time
48 the commission prescribes rules as aforesaid, and if
49 such filing does not comply as to form or substance
50 with such rules, then the public utility which filed

1 the same shall within a reasonable time after the
2 adoption of such rules make a new filing or filings
3 complying with such rules, which new filing or filings
4 shall be deemed effective as of July 4, 1963.

5 Sec. 5. Section 476.5, Code 2014, is amended to
6 read as follows:

7 **476.5 Adherence to schedules — discounts.**

8 No public utility subject to rate regulation
9 shall directly or indirectly charge a greater or less
10 compensation for its services than that prescribed in
11 its tariffs, and no such public utility shall make or
12 grant any unreasonable preferences or advantages as to
13 rates or services to any person or subject any person
14 to any unreasonable prejudice or disadvantage.

15 ~~Nothing in this section shall be construed to~~
16 ~~prohibit any public utility furnishing communications~~
17 ~~services from providing any service rendered by~~
18 ~~it without charge or at reduced rate to any of its~~
19 ~~active or retired officers, directors, or employees,~~
20 ~~or such officers, directors or employees of other~~
21 ~~public utilities furnishing communications services.~~
22 ~~Provided, however, said service is for personal use,~~
23 ~~and not for engaging in a business for profit.~~

24 Sec. 6. Section 476.6, subsection 9, Code 2014, is
25 amended by striking the subsection.

26 Sec. 7. Section 476.29, subsections 3 and 6, Code
27 2014, are amended to read as follows:

28 3. A certificate is transferable, subject to
29 approval of the board pursuant to section 476.20,
30 subsection 1, ~~and for purposes of a rate-regulated~~
31 ~~local exchange utility shall be treated by the board~~
32 ~~in the same manner as a reorganization pursuant to~~
33 ~~sections 476.76 and 476.77.~~

34 6. The certificate ~~and tariffs~~ approved by
35 the board ~~are~~ is the only authority required for
36 the utility to furnish land-line local telephone
37 service. However, to the extent not inconsistent with
38 this section, the power to regulate the conditions
39 required and manner of use of the highways, streets,
40 rights-of-way, and public grounds remains in the
41 appropriate public authority.

42 Sec. 8. Section 476.29, subsection 15, Code 2014,
43 is amended by striking the subsection.

44 Sec. 9. Section 476.72, subsections 4 and 5, Code
45 2014, are amended to read as follows:

46 4. *"Public utility"* ~~includes only means a gas~~
47 ~~or electric rate-regulated public utilities and~~
48 ~~rate-regulated telephone utilities providing local~~
49 ~~exchange telecommunication service utility.~~

50 5. *"Utility business"* means the generation or

1 transmission of electricity or furnishing of gas or
2 furnishing electricity ~~or furnishing rate-regulated~~
3 ~~communications services~~ to the public for compensation.

4 Sec. 10. Section 476.78, Code 2014, is amended to
5 read as follows:

6 **476.78 Cross-subsidization prohibited.**

7 A ~~rate-regulated gas or electric~~ public utility
8 shall not directly or indirectly include any costs or
9 expenses attributable to providing nonutility service
10 in regulated rates or charges. Except for contracts
11 existing as of July 1, 1996, a ~~rate-regulated gas~~
12 ~~or electric~~ public utility or its affiliates shall
13 not use vehicles, service tools and instruments,
14 or employees, the costs, salaries, or benefits of
15 which are recoverable in the regulated rates for
16 electric service or gas service to install, service,
17 or repair residential or commercial gas or electric
18 heating, ventilating, or air conditioning systems, or
19 interior lighting systems and fixtures; or to sell
20 at retail heating, ventilating, air conditioning,
21 or interior lighting equipment. For the purpose of
22 this section, "*commercial*" means a place of business
23 primarily used for the storage or sale, at wholesale
24 or retail, of goods, wares, services, or merchandise.
25 Nothing in this section shall be construed to prohibit
26 a ~~rate-regulated gas or electric~~ public utility
27 from using its utility vehicles, service tools and
28 instruments, and employees to market systems, services,
29 and equipment, to light pilots, or to eliminate a
30 customer emergency or threat to public safety.

31 Sec. 11. Section 476.79, Code 2014, is amended to
32 read as follows:

33 **476.79 Provision of nonutility service.**

34 1. A ~~rate-regulated gas or electric~~ public utility
35 providing any nonutility service to its customers shall
36 keep and render to the board separate records of the
37 nonutility service. The board may provide for the
38 examination and inspection of the books, accounts,
39 papers, and records of the nonutility service, as
40 may be necessary, to enforce any provisions of this
41 chapter.

42 2. The board shall adopt rules which specify the
43 manner and form of the accounts relating to providing
44 nonutility services which the ~~rate-regulated gas or~~
45 ~~electric~~ public utility shall maintain.

46 Sec. 12. Section 476.80, unnumbered paragraph 1,
47 Code 2014, is amended to read as follows:

48 A ~~rate-regulated gas or electric~~ public utility
49 which engages in a systematic marketing effort as
50 defined by the board, other than on an incidental or

1 casual basis, to promote the availability of nonutility
2 service from the public utility shall make available at
3 reasonable compensation on a nondiscriminatory basis
4 to all persons engaged primarily in providing the same
5 competitive nonutility services in that area all of
6 the following services to the same extent utilized by
7 the public utility in connection with its nonutility
8 services:

9 Sec. 13. Section 476.81, Code 2014, is amended to
10 read as follows:

11 **476.81 Audit required.**

12 The board may periodically retain a nationally or
13 regionally recognized independent auditing firm to
14 conduct an audit of the nonutility services provided by
15 a ~~rate-regulated gas or electric~~ public utility subject
16 to the provisions of section 476.80. A nonutility
17 service audit shall not be conducted more frequently
18 than every three years, unless ordered by the board for
19 good cause. The cost of the audit shall be paid by the
20 public utility to the independent auditing firm and
21 shall be included in its regulated rates and charges,
22 unless otherwise ordered by the board for good cause
23 after providing the public utility the opportunity for
24 a hearing on the board's decision.

25 Sec. 14. Section 476.83, Code 2014, is amended to
26 read as follows:

27 **476.83 Complaints.**

28 Any person may file a written complaint with the
29 board requesting that the board determine compliance by
30 a ~~rate-regulated gas or electric~~ public utility with
31 the provisions of section 476.78, 476.79, or 476.80, or
32 any validly adopted rules to implement these sections.
33 Upon the filing of a complaint, the board may promptly
34 initiate a formal complaint proceeding and give notice
35 of the proceeding and the opportunity for hearing. The
36 formal complaint proceeding may be initiated at any
37 time by the board on its own motion. The board shall
38 render a decision in the proceeding within ninety days
39 after the date the written complaint was filed, unless
40 additional time is requested by the complainant.

41 Sec. 15. Section 476.96, Code 2014, is amended to
42 read as follows:

43 **476.96 Definitions.**

44 As used in ~~section 476.95, this section, and~~
45 ~~sections 476.97 through 476.102~~ 476.100 and 476.101,
46 unless the context otherwise requires:

47 1. ~~"Basic communications service" includes at~~
48 ~~a minimum, basic local telephone service, switched~~
49 ~~access, 911 and E-911 services, and dual party relay~~
50 ~~service. The board is authorized to classify by rule~~

1 at any time, any other two-way switched communications
2 services as basic communications services consistent
3 with community expectations and the public interest.

4 2. ~~"Basic local telephone service"~~ means the
5 provision of dial tone access and usage, for the
6 transmission of two-way switched communications within
7 a local exchange area, including, but not limited to,
8 the following:

9 a. ~~Residence service and business services,~~
10 including flat rate or local measured service, private
11 branch exchange trunks, trunk type hunting services,
12 direct inward dialing, and the network access portion
13 of central office switched exchange service.

14 b. ~~Extended area service.~~

15 c. ~~Touch tone service when provided separately.~~

16 d. ~~Call tracing.~~

17 e. ~~Calling number blocking on either a per call or~~
18 ~~a per line basis.~~

19 f. ~~Local exchange white pages directories.~~

20 g. ~~Installation and repair of local network access.~~

21 h. ~~Local operator services, excluding directory~~
22 ~~assistance.~~

23 i. ~~Toll service blocking and 1-900 and 1-976 access~~
24 ~~blocking.~~

25 3. 1. ~~"Competitive local exchange service provider"~~
26 means any person, including a municipal utility, that
27 provides local exchange services, other than a local
28 exchange carrier or a nonrate-regulated wireline
29 provider of local exchange services under an authorized
30 certificate of public convenience and necessity within
31 a specific geographic area described in maps filed with
32 and approved by the board as of September 30, 1992.

33 4. ~~"Interim number portability"~~ means one or more
34 mechanisms by which a local exchange customer at a
35 particular location may change the customer's local
36 exchange services provider without any change in the
37 local exchange customer's telephone number, while
38 experiencing as little loss of functionality as is
39 feasible using available technology.

40 5. 2. ~~"Local exchange carrier"~~ means any person
41 that was the incumbent and historical rate-regulated
42 wireline provider of local exchange services or any
43 successor to such person that provides local exchange
44 services under an authorized certificate of public
45 convenience and necessity within a specific geographic
46 area described in maps filed with and approved by the
47 board as of September 30, 1992.

48 6. ~~"Nonbasic communications services"~~ means all
49 communications services subject to the board's
50 jurisdiction which are not deemed either by statute or

1 by rule to be basic communications services, including
2 any service offered by the local exchange carrier
3 for the first time after July 1, 1995. A service is
4 not considered new if it constitutes the bundling,
5 unbundling, or repricing of an already existing
6 service. Consistent with community expectations and
7 the public interest, the board may reclassify by rule
8 as nonbasic those two-way switched communications
9 services previously classified by rule as basic.

10 7. ~~"Provider number portability" means the~~
11 ~~capability of a local exchange customer to change~~
12 ~~the customer's local exchange services provider~~
13 ~~at the customer's same location without any change~~
14 ~~in the local exchange customer's telephone number,~~
15 ~~while preserving the full range of functionality~~
16 ~~that the customer currently experiences. "Provider~~
17 ~~number portability" includes the equal availability~~
18 ~~of information concerning the local exchange provider~~
19 ~~serving the number to all carriers, and the ability~~
20 ~~to deliver traffic directly to that provider without~~
21 ~~having first to route traffic to the local exchange~~
22 ~~carrier or otherwise use the services, facilities, or~~
23 ~~capabilities of the local exchange carrier to complete~~
24 ~~the call, and without the dialing of additional digits~~
25 ~~or access codes.~~

26 Sec. 16. Section 476.101, subsections 1, 8, and 10,
27 Code 2014, are amended to read as follows:

28 1. A certificate of public convenience and
29 necessity to provide local telephone service shall
30 not be interpreted as conveying a monopoly, exclusive
31 privilege, or franchise. A competitive local
32 exchange service provider shall not be subject to
33 the requirements of this chapter, except that a
34 competitive local exchange service provider shall
35 obtain a certificate of public convenience and
36 necessity pursuant to section 476.29, ~~file tariffs,~~
37 notify affected customers prior to any rate increase,
38 file reports, information, and pay assessments pursuant
39 to section 476.2, subsection 4, and sections 476.9,
40 476.10, 476.16, 476.102, and 477C.7, and shall be
41 subject to the board's authority with respect to
42 adequacy of service, interconnection, discontinuation
43 of service, civil penalties, and complaints. If,
44 after notice and opportunity for hearing, the board
45 determines that a competitive local exchange service
46 provider possesses market power in its local exchange
47 market or markets, the board may apply such other
48 provisions of this chapter to a competitive local
49 exchange service provider as it deems appropriate.

50 8. Any person may file a written complaint with the

1 board requesting the board to determine compliance by a
2 local exchange carrier with the provisions of sections
3 476.96, ~~through~~ 476.100, and 476.102, and this section,
4 or any board rules implementing those sections. Upon
5 the filing of such complaint, the board may promptly
6 initiate a formal complaint proceeding and give notice
7 of the proceeding and the opportunity for hearing. The
8 formal complaint proceeding may be initiated at any
9 time by the board on its own motion. The board shall
10 render a decision in the proceeding within ninety days
11 after the date the written complaint was filed. The
12 board, for good cause shown, may extend the deadline
13 for acting upon the complaint for an additional period
14 not to exceed thirty days.

15 10. In a proceeding associated with the granting
16 of a certificate under section 476.29, approving
17 ~~maps and tariffs~~ for competitive local exchange
18 providers provided for in this section, or in resolving
19 a complaint filed pursuant to subsection 8 and
20 proceedings under 47 U.S.C. §251 – 254, the board shall
21 allocate the costs and expenses of the proceedings
22 to persons identified as parties in the proceeding
23 who are engaged in or who seek to engage in providing
24 telecommunications services or other persons identified
25 as participants in the proceeding. The funds received
26 for the costs and the expenses shall be remitted to the
27 treasurer of state for deposit in the department of
28 commerce revolving fund created in section 546.12 as
29 provided in section 476.10.

30 Sec. 17. Section 476.101, subsections 4, 5, and 6,
31 Code 2014, are amended by striking the subsections.

32 Sec. 18. Section 477.9A, Code 2014, is amended to
33 read as follows:

34 **477.9A Deregulated services.**

35 1. A telegraph or telephone company whose services
36 are deregulated by the board under section 476.1D
37 may use public notice as a means of conveying terms
38 and conditions to customers where identification of
39 those customers is infeasible or impractical. Public
40 notice may also be used to convey changes in terms and
41 conditions, other than price increases or limitations
42 of liability, to all other customers, but only if those
43 customers were put on notice that this means would be
44 used to convey subsequent changes. Notwithstanding
45 section 477.7, when services are deregulated by the
46 board under section 476.1D, a telegraph or telephone
47 company, in any contract, agreement, or by means of
48 public notice, may reasonably limit its liability
49 under section 477.7 in the course of providing the
50 deregulated communications services to its customers,

1 except for acts of willful misconduct. However,
2 this section does not allow a greater limitation on
3 liability than exists in any contract or approved
4 tariff as of the effective date of the deregulation of
5 the services.

6 2. A telephone company whose services are subject
7 to regulation by the board with respect to terms and
8 conditions, but not rates, shall give notice of rate
9 changes to customers.

10 Sec. 19. REPEAL. Sections 476.4A, 476.97, and
11 476.99, Code 2014, are repealed.>

12 2. Title page, by striking lines 1 through 3
13 and inserting <An Act relating to matters under the
14 purview of the utilities division of the department of
15 commerce.>

WATTS of Dallas